

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

ANNIE LAURIE GAYLOR; DAN
BARKER; IAN GAYLOR, Personal
Representative of the estate of ANNE
NICOL GAYLOR; AND FREEDOM
FROM RELIGION FOUNDATION,
INC.,

Plaintiffs,

v.

JACOB LEW, Secretary of the United
States Department of Treasury; JOHN
KOSKINEN, Commissioner of the
Internal Revenue Service; and the
UNITED STATES OF AMERICA,

Defendants.

Case No. 16-CV-215

DECLARATION OF FATHER PATRICK W. MALONE, OSB

1. My name is Father Patrick W. Malone. I am over the age of 21 and am capable of making this unsworn declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or crime involving dishonesty, and the facts contained below are either within my personal knowledge or are based upon the teachings of my church with which I am familiar and which I believe to be true and correct.

2. I am the rector of Holy Cross Anglican Church (“Holy Cross” or “Church”) in Waukesha, Wisconsin. In that role, I am responsible for the preaching and teaching delivered at the Church and for leading our worship services, and to care for the souls of those in my church. I am a member of the Order of Saint Benedict, which is an

international prayer society and has 6 houses of prayer in the USA and Africa. Since 2012, I have served as Abbot of the Anglican Communion Benedictines, a Benedictine community devoted to prayer and a life of contemplation. And I serve as Archdeacon of Religious Orders, Societies, and Communities for the Convocation of Anglicans in North America (“CANA”). CANA has four dioceses. I have over 25 years of pastoral and ministry experience.

3. Holy Cross Anglican Church is a member of The Anglican Church of North America and under the diocese of CANA East, the CANA diocese that covers the eastern half of the United States. There are 65 active members of the church who regularly attend Sunday worship services.

4. As the rector of Holy Cross Anglican Church and a priest in the Anglican Communion, I am required to preach to the congregation about what it means to be a follower of Jesus Christ and properly respond to the love that God gave us through Jesus’ death, burial and resurrection. *See* Article XIX, 39 Articles of Religion (1801), http://anglicansonline.org/basics/thirty-nine_articles.html (noting that the church must be a place “in which the pure Word of God is preached”). Having a priest present to preach and administer the Sacraments is fundamental to Anglican worship. *See* Article XXIII, 39 Articles of Religion (“It is not lawful for any man to take upon him the office of public preaching . . . before he be lawfully called, and sent to execute the same.”).

5. In addition to preaching, I also minister the Sacraments of Baptism and Holy Communion to the Church. *See* Article XXV, 39 Articles of Religion. (“There are

two Sacraments ordained of Christ our Lord in the Gospel, that is to say, Baptism, and the Supper of the Lord.”). These Sacraments are an important part of Anglican worship, and administering weekly communion is at the center of who a priest is. Initiating people into the life of Christ through baptism, hearing the confession of sin, being able to announce pardon and absolution, and facilitating and delivering the body and blood of Christ to each person through communion are all part of a priest’s identity and calling.

6. These sacraments are not only symbols of the congregants’ faith in Christ, “but rather they be certain sure witnesses, and effectual signs of grace, and God’s good will towards us, by the which he doth work invisibly in us, and doth not only quicken, but also strengthen and confirm our Faith in him.” *Id.* Baptism unites to Christ in his death, burial and resurrection, and brings about a fellowship with others in union with him. But sin causes discord in that union. Thus each member of the congregation needs weekly communion to reestablish and reaffirm that union and receive the forgiveness of sin.

7. Only a priest who has been called to the ministry may administer these sacraments. *See* Article XXIII (“It is not lawful for any man to take upon him the office of . . . ministering the Sacraments in the Congregation, before he be lawfully called, and sent to execute the same.”). So, it is imperative to the religious practice and spiritual formation of each member of my congregation that I be present to perform my ministry. For the Church to be spiritually healthy, it needs the constant presence of a priest to minister to each person.

8. My role as rector extends beyond liturgical services. All priests are called “to be Messengers, Watchmen, and Stewards of the Lord; to teach, and to premonish, to feed and provide for the Lord’s family; to seek for Christ’s sheep that are dispersed abroad, and for his children who are in the midst of this naughty world, that they may be saved through Christ for ever.” *The Form and Manner of Ordering Priests, The 1928 Book of Common Prayer*, <http://justus.anglican.org/resources/bcp/1928/Ordinal.htm>. This means that I am called to provide pastoral care to all those living within my field of ministry, that is, to the people of Waukesha, Wisconsin, whether or not they currently attend Holy Cross.

9. Becoming a priest worked a fundamental change in my identity: I am a priest day and night, and my role is to constantly deliver to people the forgiveness of sins that Jesus Christ offers them. I regularly meet with and counsel individuals both in and out of the parish who are dealing with temporal or spiritual challenges. *See* Acts 20:28 (“Pay careful attention to yourselves and to all the flock, in which the Holy Spirit has made you overseers, to care for the church of God, which he obtained with his own blood.”). I also spend time visiting the sick in the Waukesha and Milwaukee area. *See* James 5:14 (“Is anyone among you sick? Let him call for the elders of the church, and let them pray over him, anointing him with oil in the name of the Lord.”).

10. Because these needs can arise at any time, day or night, I am often involved in this ministry late in the evening and early in the morning. This makes it extremely important for me to live near the Church and my congregation. If I lived a significant distance away and had to restrict the times that I was available for pastoral duties,

my ability to minister to the spiritual needs of my flock would be impaired. For this reason, I live just nine blocks from where the Church meets.

11. As part of my compensation, the Church provides me with a housing allowance of about \$1542 per month, which I use to rent and furnish a home for my family, which includes my wife and two children. When I file my tax returns, I exempt the housing allowance from my gross income under 26 U.S.C. § 107(2). I plan to continue to do so in the future.

12. Holy Cross is a small church whose members have modest incomes. The Church's entire annual budget is approximately \$50,000. Holy Cross cannot afford the major up-front costs that buying a physical parsonage would entail. Thus, the Church provides me with a housing allowance instead. For similar reasons, the Church does not own its own chapel. We rent space for our services at Carrol University in Waukesha, Wisconsin.

13. In addition to serving as the rector of Holy Cross, I assist an Anglican bishop in interviewing and processing applicants who desire to work as chaplains. I also serve as an on-call hospital chaplain on Friday nights for three local hospitals. I consider these jobs an extension of my duties and calling as a priest to care for the souls of those around whom I live. The calling is the same I have as a priest, but the compensation comes from somewhere other than Holy Cross.

14. It is my understanding that the Freedom From Religion Foundation ("FFRF") filed a lawsuit seeking to strike down the parsonage allowance in § 107(2).

It is also my understanding that if § 107(2) were struck down, then the IRS would tax my housing allowance.

15. Taxing my housing allowance would severely harm the Church, both because of its small size and the modest income of its members and its leadership. Eliminating the parsonage allowance would double my gross taxable income from Holy Cross, and thus would cause a major increase in my income tax liability. I would not be able to support my family under those circumstances and would be forced to reevaluate my call to serve as rector of Holy Cross. I would either have to take additional work outside the parish or leave the parish altogether.

16. Holy Cross would not be able to increase my housing allowance to compensate for the additional tax. The Church is already on a shoestring budget, and such an increase would likely force the Church to fold.

17. I first realized this threat on October 12, 2016, after learning that FFRF had challenged the parsonage allowance in *Gaylor v. Lew*.

18. I was particularly concerned because it is my understanding that this is the second time that FFRF has challenged the parsonage allowance, and that they were successful the last time. I understand that the Court reached its decision in the last case without ever hearing from ministers like me about how the financial cost of eliminating the parsonage allowance would place unique burdens on the religious practice of small churches of modest means. Because the IRS, Department of the Treasury, and United States Government do not share my religious beliefs and face

no similar financial harm, I cannot expect them to assert the Church's and my interests in the continued availability of the parsonage allowance.

19. After learning of this case, I promptly began seeking guidance from the wardens (church leaders) of Holy Cross Anglican Church to address the threat.

20. On October 23, 2016, after prayer and consideration, the Church's vestry voted to seek to intervene in *Gaylor v. Lew* to protect our rights.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 28, 2016.

A handwritten signature in black ink that reads "Patrick W. Malone +". The signature is written in a cursive, flowing style.

The Venerable Patrick W. Malone, OSB